

FLORIDA AND VIRGINIA BIRTH-INJURY PROGRAMS

Florida and Virginia's birth-injury compensation programs have a number of strengths and several shortcomings. The programs have succeeded in expediting compensation and improving efficiencies. There is also some evidence, particularly from the programs' early years, that they helped to stabilize state markets for medical liability insurance. Still, they have faced challenges with the restrictiveness of eligibility standards and financing stability, and have had minimal effectiveness in enhancing safety and expanding patient compensation. These programs represent important models for proposals in other states, and their strengths and weaknesses can help to guide design choices in current reform efforts.

Affordability of Malpractice Insurance Coverage for Obstetricians

- OB/GYN liability premiums fell in both Virginia and Florida after creation of the programs (although the extent to which the programs alone caused this is difficult to determine).

No-Fault and Lifetime Benefits

- Eligibility criteria do not include provider fault or negligence.
- The Virginia plan covers medical care, rehabilitation, economic losses, and other benefits; similarly, the Florida plan covers medical and other related expenses.

Expedited Compensation

- A legislative review commission in Virginia found that children in the program fared better than they would have in the state's tort system:
 - Administration of the program was considerably faster than tort.
 - Over half of families would not have been compensated under the tort system.
 - More than two-thirds of parents would have chosen the program over a lawsuit.
- Similarly, research suggests that the Florida program has compensated patients on a more expedited basis than could have been expected in the tort system.

Improved Efficiency and Expert Panels

- Both programs have relatively low administrative costs compared with the tort system (between 8-10 percent of total expenses vs. over 50 percent in the tort system).
- In Virginia, an expert panel adjudicates claims; in Florida, the program examines petitions and coordinates medical review of children seeking entry.

Little Impact on Patient Safety (But This Wasn't the Original Intent)

- In enhancing safety and expanding patient compensation, the programs have had minimal effectiveness, largely because they were not designed for this purpose and no effort has been made to deploy them toward this end. Leading academics and researchers have suggested that a properly designed administrative system could help to advance patient safety goals.

Peculiar Financing Design Elements

- Virginia's program is in an actuarially unsound condition, although it has enough resources to pay expenses for at least the next 25 years. Contributing to the program's financial condition is its assessment structure: state law does not allow assessments to be increased but permits them to be reduced. This was done in the early years of the program; had this not been done, the program's financial condition would today likely be secure.
- Florida's program is financially sound.

Eligibility Criteria and Notification

- The programs have also faced challenges with the restrictiveness of eligibility standards; particularly in Florida, a number of claim types continue to be addressed in the tort system.
- To alleviate concerns regarding patient awareness of the compensation system, Virginia lawmakers passed legislation requiring physicians to notify patients of the program.